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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/557,333	11/20/2006	Eduardo Chi Sing	1001.2218102	9448
28075 7590 11/19/2009 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			EXAMINER ALAWADI, SARAH	
			ART UNIT 1619	PAPER NUMBER
			MAIL DATE 11/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/557,333

**Applicant(s)**

SING ET AL.

**Examiner**

SARAH AL-AWADI

**Art Unit**

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24, 25 and 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of Applicant's amendments and remarks filed on 06/23/2009. The Examiner acknowledges the following:

Claims 1-23 have been withdrawn.

Claims 24, 25, and 28-30 have been amended.

Claims 26-27, and 31-32 have been cancelled.

Currently, claims 24-25, and 28-30 are under Examination.

### **INFORMATION DISCLOSURE STATEMENT**

No new Information Disclosure Statements have been submitted for consideration.

### **WITHDRAWN REJECTIONS**

#### Objection to Specification

Applicants have pointed out in the response filed 06/23/2009 that if the material incorporated by reference becomes necessary and relied upon, the Applicant will amend to clarify where the material is taught. Therefore said objection is hereby **withdrawn**.

#### Rejection under 35 USC 101

Applicants have amended claims 24-25 and 28-30 and cancelled claims 26-27, and 31-32 which renders said rejection moot on the basis that the "means for" language has been removed. Therefore, said rejection is hereby **withdrawn**.

#### Rejection under 35 USC 102(b)

Applicant's amendments/remarks have rendered said rejection of claims 24-32 under over Helbig et al. (U.S. Patent 4,502,228) moot. Therefore said rejection is hereby **withdrawn**.

Applicant's amendments/remarks have rendered said rejection of claims 24-32 under over Markwardt et al. (U.S. Patent, 4,924,764 ) moot. Therefore said rejection is hereby **withdrawn**.

Rejection under 112 1<sup>st</sup> Paragraph

Applicants amendments and remarks have rendered said rejection over claims 24-25 and 28-30 moot. Therefore said rejection is hereby **withdrawn**.

**NEW REJECTIONS**

In light of Applicant's amendments, the following rejections have been newly added:

**Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-25, 28, and 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regards to the term "addition element" it is not clear if "addition element" is a structural component of the apparatus or if the elements (cross linking agent or polysaccharide) are being added to one mixture. If the cross-linking agent is the addition element it is not clear how the apparatus imparts that structure once the cross-linking agent is added because once the cross linking agent is added there is no more "addition element." The Examiner respectfully submits that should Applicant's disclose that each "addition element"

recited forms part of the apparatus, there is no support found in the specification for such an element, see reasons below. Support is found for adding cross-linking agents and polysaccharides, however such support does not impart any structural limitations to the apparatus and there is no teaching in the disclosure whether the “addition elements” are part of the instant apparatus or are intended to be ingredients added to a mixture.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 24-25 and 38-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This is a **new matter** rejection. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As amended, the instant claim set submitted 06/23/2009 recites the limitations of “air injector” “water supply” and “addition element.” With regard to the air injector, in paragraph 0018 and original claims 15 and 24, there is mention of “adding air”, but there is no explanation for how the air is added. There is also no implied support found for an “aerator or aeration” of any sort. In addition, while water is added to a mixture in paragraphs [0017], [0018], [0024], [0026], [0034] and original claim 15, there is no implied support for a “water supply”. With regards to “addition element” if applicants mean

for the addition element to impose structural limitations for the apparatus, there is no support found for multiple addition elements. Support is found for adding cross-linking agents, and polysaccharide, there is no mention of an apparatus with an "addition element." After carefully examining the instant disclosure, the examiner respectfully submits that support for this amendment is lacking and the addition of said limitations is **new matter**. Applicant is required to either point to where support for the new limitations are, or cancel the new matter.

***Claim Rejections - 35 USC § 103***

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 24-25 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pawelchak et al. United States Patent, 4,292, 972 and Reich, United States Patent, 6,706, 690.

Pawelchak et al. discloses hemostatic products (column 3, lines 21-22) that are formed with a mixing device used to mix a dry blend of gelatin (granule feeding), pectin (type of polysaccharide), and sodium carboxymethylcellulose. (see column 3, lines 60-69 and column 4 lines 4-8) The mixing device contains a mixing element (propeller or mixer) which is capable of mixing the gelatin granules. (column 4, lines 6-7) The mixing device contains a water supply because Pawelchak discloses the dry blend is added with agitation water and that the amount of water added is controlled. (see column 4, lines 4-9) Pawelchak et al. teaches that the aqueous colloidal dispersion is foamed and that gas entrapment occurs by means of a tube having a cylinder that injects air into the dispersion. (see column 4, lines 35-38) Cross linking agents such as formaldehyde are added to the foamed colloidal dispersion. (column 5, lines 22-25) Pawelchak et al. teaches that other substances (polysaccharides) are added to the foamed colloidal suspension (column 5, lines 37) (see example 1)

Pawelchak et al. discloses drying the hemostatic article by a process of freeze drying, but does not disclose drying with a dryer above a freezing point temperature.

Reich et al. cures this deficiency and teaches the formation of hemostatic materials which includes freeze-drying or other methods such as air drying, heat assisted drying, molding, or spray drying in order to dry the materials (column 4, line 67- column 5 line 3)

It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to create the hemostatic article by mixing, heating, adding water, gelatin, air,

and polysaccharides via an apparatus because Pawelchak et al. expressly teaches the formation of a hemostatic article which necessarily requires the use of the apparatus. One of ordinary skill in the art would have been motivated to dry the apparatus taught by Pawelchak et al. by other techniques such as spray drying, heat drying or molding as Reich et al. teaches such techniques as alternative methods. One would have had a reasonable expectation of success to spray dry or heat dry the hemostatic material taught by Pawelchak because Reich et al. and Pawelchak create a hemostatic article through the addition of gelatin, polysaccharides and cross linking agents and then drying the hemostasis material.

Claim 24-25 and 38-30 rejected under 35 U.S.C. 103(a) as being unpatentable over Ji et al., United States Patent 5,894,022 and Szymaitis United States Patent Application 2003/0194380.

Ji et al. teaches compositions which form a gel that can be heated in a water bath. The compositions can include hemostatics. (column 3, line 8) Ji teaches that the particles can be cooled and placed through a needle into a liquid, and collecting the particles by filtration, then suspending the particles in a liquid medium such as normal saline. (column 3, lines 35-45).

It is well known to those skilled in the art that saline is an aqueous solution which comprises water. The matrix composition taught by Ji can include addition elements such as gelatin, cross-linking agents, starch (polysaccharide) albumin (clot formation accelerator) and stabilizers. (column 7, lines 12-24) The composition can be prepared by heating, mixing and dissolving reagents. (see column 7, lines 55-67)

Though Ji et al. does not expressly teach the injection of air to the composition, one of ordinary skill in the art would have been motivated to include an air injector because Szymaitis teaches the formation of hemostatic articles by adding air. One of ordinary skill in the art would have been motivated to add the air taught by Szymaitis with Ji because Szymaitis teaches that hemostatic materials are activated by the addition of air. There would have been a reasonable expectation of success for adding air because the the addition of air would not interfere with the components taught by Ji and because both references teach the formation of hemostatic materials.

It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to create an apparatus that utilizes a heat source, an air injector, a feeding system, mixing elements and addition elements. One would have been motivated to form one apparatus suggested by Ji and Szymaitis in order to form an apparatus with good efficiency of producing hemostatic articles. One would have formed the apparatus with a reasonable expectation of success because water baths, air injectors, heating elements, and mixing chambers are routinely used in the art to form hemostatic articles.

#### CONCLUSION

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136 (a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Al-Awadi whose telephone number is (571) 270-7678. The examiner can normally be reached on 9:30 am - 6:00 pm; M-F (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bonnie Eyler can be reached on (571) 272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SA/

Examiner, Art Unit 1619

/Shanon A. Foley/

Primary Examiner, Art Unit 1619